



IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1976

No. 67, Original

STATE OF IDAHO, ex rel CECIL D. ANDRUS,
Governor; WAYNE L. KIDWELL, Attorney
General; JOSEPH C. GREENLEY, Director,
Department of Fish and Game, *Plaintiffs,*

v.

STATE OF OREGON, STATE OF WASHINGTON,
Defendants.

**ANSWER OF DEFENDANT
STATE OF WASHINGTON**

SLADE GORTON

Attorney General

EDWARD B. MACKIE

Deputy Attorney General

Temple of Justice
Olympia, Washington 98504
(206) 753-6207

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1976

No. 67, Original

STATE OF IDAHO, ex rel CECIL D. ANDRUS,
Governor; WAYNE L. KIDWELL, Attorney
General; JOSEPH C. GREENLEY, Director,
Department of Fish and Game, *Plaintiffs,*

V.

STATE OF OREGON, STATE OF WASHINGTON,
Defendants.

**ANSWER OF DEFENDANT
STATE OF WASHINGTON**

SLADE GORTON

Attorney General

EDWARD B. MACKIE

Deputy Attorney General

Temple of Justice
Olympia, Washington 98504
(206) 753-6207

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1976

No. 67, Original

STATE OF IDAHO, ex rel CECIL D. ANDRUS,
Governor; WAYNE L. KIDWELL, Attorney
General; JOSEPH C. GREENLEY, Director,
Department of Fish and Game, *Plaintiffs,*

v.

STATE OF OREGON, STATE OF WASHINGTON,
Defendants.

**ANSWER OF DEFENDANT
STATE OF WASHINGTON**

COMES NOW defendant State of Washington by and through its attorneys, SLADE GORTON, Attorney General, and EDWARD B. MACKIE, Deputy Attorney General, and in answer to the Complaint, admits, denies and alleges as follows:

I.

For answer to Paragraph I of the Complaint, defendant admits the same.

2

II.

For answer to Paragraph II of the Complaint, defendant admits that Cecil D. Andrus was the Governor of the State of Idaho at the time of the filing of the Complaint and that John V. Evans is now the Governor of Idaho. With reference to all other allegations in Paragraph II, defendant admits the same.

III.

For answer to Paragraph III of the Complaint, defendant admits the same.

IV.

For answer to Paragraph IV of the Complaint, defendant admits the same.

V.

For answer to Paragraph V of the Complaint, defendant admits that the partial quotation is from 28 USC § 1251 (a) (1). With respect to all other allegations contained in Paragraph V, defendant denies the same.

VI.

For answer to Paragraph VI of the Complaint, defendant admits the same but denies that it is legally obligated to share the anadromous fishery.

VII.

For answer to Paragraph VII of the Complaint, defendant admits the same and further alleges the fish migrating from the Pacific Ocean to the State

of Idaho are confronted with eight major obstructions which are dams constructed and operated by the United States Corps of Engineers. Defendant further alleges that there are four major dams located within the State of Idaho on the Snake River and its major tributaries which have substantially reduced the natural production of anadromous fish in the State of Idaho.

VIII.

For answer to Paragraph VIII of the Complaint, defendant admits the same.

IX.

For answer to Paragraph IX of the Complaint, defendant admits that the Idaho anadromous fishery is made up principally of upriver spring Chinook salmon, summer Chinook salmon, and Group "A" and "B" summer steelhead trout. With reference to all other allegations, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

X.

For answer to Paragraph X of the Complaint, defendant denies that the benefits to Idaho have been substantially below an equitable level. With reference to all other allegations, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XI.

For answer to Paragraph XI of the Complaint, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XII.

For answer to Paragraph XII of the Complaint, defendant admits the same.

XIII.

For answer to Paragraph XIII of the Complaint, defendant admits that the State of Washington is represented in the compact by its Department of Fisheries and that Oregon is represented by the Oregon Fish and Wildlife Commission. For further answer defendant alleges that an advisory council of the compact consisting of a representative of the Idaho Department of Fish and Game, the Washington Department of Game, the Oregon Fish and Wildlife Commission, and the Washington Fisheries Department meet prior to action by the compact to respond and suggest modifications in the proposals for adoption by the compact. Further, the Idaho representative and the representative of the Department of Game of the State of Washington are given places at the head table at compact meetings although they are not permitted to vote at the compact meetings. The defendant admits that regulations are agreed upon by the Oregon Fish and Wildlife Commission and the Washington Department of Fish-

eries at compact meetings whereupon each of them independently institutes the agreed-to regulations. However, the compact can directly enforce such regulations. Defendant admits that the regulation of the sport fishery is independent of the compact. Defendant denies Oregon has a Fish Commission which is separate and distinct from the Oregon Wildlife Commission.

XIV.

For answer to Paragraph XIV of the Complaint, defendant denies the same.

XV.

For answer to Paragraph XV of the Complaint, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XVI.

For answer to Paragraph XVI of the Complaint, defendant admits that the State of Oregon has enacted legislation to permit the entrance of Idaho to the Oregon-Washington Compact but Idaho has expressed objections to that legislation. Defendant State of Washington has not enacted legislation permitting Idaho to join the compact and such joiner, even if consented to by all three states, requires the approval of the United States Congress. With respect to all other allegations defendant is without sufficient knowledge or facts to form a belief as to

the truth or falsity thereof and therefore denies the same.

XVII.

For answer to Paragraph XVII of the Complaint, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XVIII.

For answer to Paragraph XVIII of the Complaint, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XIX.

For answer to Paragraph XIX of the Complaint, defendant admits that the construction of the dams by the United States Corps of Engineers and the other dams referred to in Paragraph VII of this Answer have adversely affected the anadromous fish runs in the Columbia River and the anadromous fish returning to the State of Idaho. Defendant further admits that hatchery production in the Columbia Basin is necessary to supplement the natural anadromous fish runs. With respect to all other allegations contained therein, defendant is without sufficient knowledge or facts to form a belief as to the truth of falsity thereof and therefore denies the same.

XX.

For answer to Paragraph XX of the Complaint,

defendant admits all allegations with the exception of the reference to "spiritual values" for which the defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity therefore and therefore denies.

XXI.

For answer to Paragraph XXI of the Complaint, defendant denies the same.

XXII.

For answer to Paragraph XXII of the Complaint, defendant is without sufficient knowledge or facts to form a belief as to the truth or falsity thereof and therefore denies the same.

XXIII.

For answer to Paragraph XXIII of the Complaint, defendant denies the same.

For further answer and by way of affirmative defense, defendant affirmatively alleges as follows:

I.

The complaint fails to state a claim upon which relief can be granted.

II.

Plaintiff has failed to join the United States government which is an indispensable party by virtue of its construction and operation of dams on the Columbia and Snake Rivers which have a direct, ongoing impact upon both downstream and upstream fish migration mortalities.

III.

The plaintiff has failed to join the United States as trustee for the Indian tribes having fishing rights in the Columbia and Snake Rivers, the exercise of such rights having an on-going impact upon the availability of fish for harvest within the State of Idaho.

IV.

The United States District Court of Oregon in *U.S. v. Oregon*, Civil No. 68-153, has and continues to exercise continuing jurisdiction over the exercise of regulatory authority by the defendant States of Washington and Oregon on fishing activities within the Columbia River.

V.

The plaintiff has failed to join the United States government, which is an indispensable party for all matters relating to the Oregon-Washington Columbia River Fish Compact since Congressional approval is required for the admission of any parties to that compact.

VI.

The Court lacks jurisdiction over the subject matter.

DATED this 5th day of April, 1977.

SLADE GORTON

Attorney General

EDWARD B. MACKIE

Deputy Attorney General

*Attorneys for Defendant
Washington*

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 1977, three copies of Answer of Defendant State of Washington were mailed, postage paid, to:

Honorable Wayne L. Kidwell

Attorney General

Terry E. Coffin

Deputy Attorney General

Matthew J. Mullaney, Jr.

of Counsel

Statehouse

Boise, Idaho 83720

Honorable Wade McCree

Solicitor General

Department of Justice

Washington, D.C. 20530

Wendell Wyatt

Souther, Spaulding, Kinsey,

Williamson & Schwabe

1200 Standard Plaza

Portland, Oregon 97204

Robert E. Smylie

300 Simplot Bldg.

Boise, Idaho 83702

and further that all parties required to be served were served.

EDWARD B. MACKIE

Deputy Attorney General

Attorney for Defendant

Washington

